Making Fair Housing Laws Work: A Practical Approach to Compliance



Where a person comes from, what he looks like, if and how a person worships, who he loves, whether he has children, and any disabilities a person may have

should NOT influence where he can live...

In California, the Law Prohibits Discrimination Based on:

- Race
- Religion
- National Origin
- Color
- Sex
- Gender, genderidentity and expression
- Marital Status

- Ancestry
- Family Status
- Mental and Physical Disability
- Sexual Orientation
- Source of Income
- Genetic Information
- Age

What NOT to Say . . .

- "I don't rent to families with small children on the second floor."
- "Please don't let any of the other tenants know where you are from."
- "You need a separate bedroom for a boy and a girl."
- "Are you two married?"

Disability Defined (in California)

- A mental or physical impairment that limits a major life activity
 - Makes that activity difficult
 - Major Life Activity includes: mental, physical and social activities, as well as working
 - Examples: depression, alcoholism, schizophrenia, blindness, HIV/AIDS, multiple sclerosis

Alcoholism vs. Addiction to Illegal Drugs

DISABILITY

- Current alcoholism
- Past alcoholism
- Past drug addiction

NOT DISABILITY

Current illegal drug use

What is "Fair" in Fair Housing?

Race, color, religion, sex, gender, gender identity and expression, national origin, family status, marital status, sexual orientation, ancestry source of income, genetic information, and arbitrary characteristics

Everyone should be treated the same

Mental and Physical Disability

People with disabilities should be treated the same, **UNLESS** to do so would effectively bar access

Emotional Support & Other Assistance Animals In "No Pets" Buildings

- Emotional support and other assistance animals are NOT pets.
- May not charge "pet deposit" for emotional support or other assistance animal.
- Landlord may request letter from medical professional or social worker confirming disability and need for animal.*

Incidents of Violence Related to Disability

- Landlord may be asked to waive eviction as a reasonable accommodation if unacceptable incident was related to disability and tenant presents a credible plan to prevent recurrence.
- Landlord may request letter from mental health care provider/social worker confirming incident's relation to disability and existence of a credible plan to prevent recurrence.

Other Common Reasonable Accommodations

- Live-in aide (in subsidized housing)
- Adjustment of rent due date
- Parking space closer to entrance
- Accepting alternative references from applicant whose disability means he has no tenant history
- Alternative chores (in emergency shelters)
- Permission to stay indoors during the day at nightonly shelters

Reasonable Accommodation

- A change in rules to help a person with a disability access housing or housing-related services
 - Must be necessary due to disability
 - to provide person with a disability equal opportunity to housing AND
 - Must not pose an undue administrative or financial burden, or fundamentally alter the nature of the program

Necessary Due To Disability: Nexus

- Must be a nexus between the accommodation requested and the functional limitations of the disability
 - "My disability makes contact with other people extremely frightening, I would like permission to enter and exit through side door of building instead of main entrance, to minimize contact."
 - NOT, "My disability makes it impossible to climb stairs, I would like permission to paint walls pink."

Accommodation requests are NOT "Reasonable" if they pose:

- An "Undue Burden" too difficult or expensive for landlord to provide
 - Landlord can't be expected to expose tenants to fire hazards or noxious odors to accommodate hoarding tenant
- A "Fundamental Alteration in the Nature of the Program" – alters the essential nature of what the establishment offers; may undermine main purpose
 - Sober living home provider isn't expected to allow alcohol
 - Landlord can't be expected to walk and clean up after emotional support animal

Direct Threat Exception

- Do not have to make housing available to anyone who poses a current direct threat to the health and safety of others, or whose tenancy is likely to result in substantial damage to the property of others.
 - Threat must be real, not based on conjecture.
 - Must attempt reasonable accommodation, is possible.

Reasonable Accommodation Requests

- Tenant must request the accommodation.
 - Housing provider may not impose an unwanted accommodation.
 - Housing provider may request letter verifying disability and need for accommodation from healthcare or service provider.
 - Don't wait to hear term "reasonable accommodation."
- If nexus between accommodation and functional disability is unclear, housing provider may request further explanation – but may not probe into details of medical condition.
- Tenant may request multiple accommodations.
 - May make request anytime, during application, tenancy or eviction.

Reasonable Accommodation: An Interactive Process

If a housing provider refuses a request for an accommodation because he thinks it is not reasonable, he needs to invite discussion with the tenant about any alternative accommodations that would address the tenant's disability-related needs. Landlord MUST work with tenant to explore options.

Reasonable Modification

- A structural change to the building to allow a person with a disability full use the housing.
- Includes interior and exterior of dwellings, as well as common areas.
- Must be nexus between disability and requested modification, and must be reasonable.
 - Widening doorways to make rooms more accessible for people using wheelchairs
 - Installing grab bars in showers
 - Lowering kitchen cabinets

Reasonable Modifications, cont.

- Tenant must pay for a reasonable modification,*
- If disability/need is not obvious, landlord may request verification.
- Landlord may demand that tenant put money into an interest-bearing account, to restore unit to previous condition if modification could interfere with next tenant's use.
- Modifications must be installed correctly and in compliance with applicable codes.

^{*} Certain exceptions apply

Privacy and R.A./R.M. Requests

- Housing provider may request that tenant's healthcare or service provider describe what aspect of disability makes the accommodation/modification necessary.
- May NOT request medical records, diagnosis, independent evaluation, etc.
- Housing provider may NOT share information about disability with anyone else without tenant's permission.

Selecting Good Tenants WITHOUT Violating Fair Housing Laws

KEY POINT: Stereotypes of Disability vs. Behavior

 Making decisions based on stereotypes of how people with a certain disability will behave is not legal.

<u>BUT</u>

- Making decisions based on actual behavioras-a-tenant is legal, acceptable and expected.
 - Fair housing laws do NOT mean that people with disabilities can do whatever they want and everyone else has to suffer.

Landlords ARE ALLOWED* to Discriminate of the basis of:

- Bad credit
- Prior evictions/poor tenant history
- Criminal background checks
- Minimum income requirements
- Current illegal drug use
 <u>as long as these standards are applied to</u>

 ALL APPLICANTS EQUALLY

Questioning Applicants for Housing – Key Concepts

 Can't ask about disability or assume anything about a person's ability to be a good tenant or guest based on DISABILITY

BUT

 May inquire about tenancy-related BEHAVIOR

Prohibited Questions for Applicants: Disability-based

- Have you ever been hospitalized?
- Do you take medications?
- Do you drink?
- Do you have any disabilities?
- Are you capable of living alone?

Permissible Questions for Applicants: Behavior-based

- Have you ever been evicted?
- Will you pay your rent on time?
- What is your proof of income?
- What is your criminal history?
- Will you respect the rights of neighbors?

Questioning Applicants – Housing vs. Programming

- Housing staff do INITIAL intake to accept or deny housing applications
 - Permissible questions limited by fair housing laws
- Supportive Services staff may ask more detailed questions, AFTER acceptance into housing has been established
 - Now permissible to ascertain service needs

Small Exception:

- In housing projects reserved by funding source for people with disabilities, or for people with a specific disability, providers may request that applicants confirm that they have the qualifying disability
 - No additional information about the disability may be requested

Confidentiality

- All information regarding disability from an applicant, resident or guest should be kept confidential
 - Resident/guest may authorize the release of information, preferably written

Good Practice Tips

- Maintain records of all important interactions with tenants
 - Discussions about reasonable accommodation requests, 3-day notices for problem behaviors, etc.
- Take immediate action to deal with problem behavior
- Inform all tenants of right to request reasonable accommodations

OVERVIEW OF FAIR HOUSING LAWS

Federal:

Fair Housing Amendments Act of 1988

Evolved from the Civil Rights Act of 1968, signed shortly after the assassination of Martin Luther King, Jr., in part as a tribute to his service to the nation. Currently prohibits discrimination in housing based on race, color, religion, sex, national origin, disability or family status.

California:

Fair Employment and Housing Act

Created in 1980 when state combined employment and housing laws enacted in 1959 and 1963 respectively. Currently prohibits above, plus marital status, ancestry, sexual orientation, gender, gender expression and identity, genetic information, source of income.

Unruh Civil Rights Act

Currently prohibits many kinds of discrimination in housing, including discrimination based on **age.**